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IN THE

Supreme Court of the United States

October Term, 1965

NO. 638

STANDARD-TRIUMPH MOTOR COMPANY, INC.,
Petitioner,

v.

CITY OF HOUSTON AND HOUSTON INDEPENDENT SCHOOL DISTRICT, *Respondents*

BRIEF OF RESPONDENTS, CITY OF HOUSTON AND HOUSTON INDEPENDENT SCHOOL DISTRICT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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To The Honorable The Chief Justice And Associate Justices Of The Supreme Court Of The United States.

The respondents, City of Houston and the Houston Independent School District, file this opposition to the petition for Writ of Certiorari filed by petitioner to review the judgment of the United States Court of Appeals for the Fifth Circuit.

QUESTIONS PRESENTED

1. Whether the Trial Court, United States District Court, had jurisdiction or power to render the Declaratory Judgment it did, which is contrary to Title 28 U.S.-C.A., Section 1341, (known as the Johnson Act), which provides:

> "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State Law where a plain, speedy and efficient remedy may be had in the courts of such State."

SUMMARY OF MATERIAL FACTS

The evidence in the record reveals conclusively that when the subject automobiles were transported by ship to Houston, Texas, from Coventry, England, where they were manufactured, (R. 7), they are not crated in any manner. (R.15). The automobiles were taken off the ship and drained; gasoline was put in them, the radiators filled with water, and the batteries were connected. And they were driven to the lot where they were stored. Then, when a particular automobile was sold to a dealer the automobile was repaired, if injured during the voyage, and bumpers, windshields and head lights were installed, seal beams were put on, and the automobile was washed. It took approximately three and one-half to four hours to get the automobile ready for the dealer, including tuning the motor and checking it and making it safe. Since the year 1961 the automobiles are stored inside of a warehouse. Until about June 1, 1961, Petitioner did its own servicing of the automobiles. Subsequently, petitioner has had the servicing done by Bozarth Company. (R. 11, 12, 13.)

Petitioner had a total of 371 of such automobiles on hand in Houston, Texas, on January 1, 1961. Such automobiles are the ones assessed for taxes by respondents. (R. 10).

The automobiles remained in Houston until they were sold to dealers. Sixty-five of the 371 automobiles were sold to dealers in Houston. One Hundred twenty cars were sold to dealers in Texas, other than in Harris County, and one hundred eighty-six were sold to dealers in other states. (R. 11). Some of the automobiles may remain in Houston for ninety days before they are sold. (R. 31). Some of the automobiles are sold to dealers in Houston before they are taken off of the ship.

ARGUMENT

The State of Texas provides a plain, adequate and complete remedy to petitioner if the subject tax assessment, and the collection of said taxes assessed are illegal. Therefore, the District Court erred in assuming or taking jurisdiction of this action or suit, and in rendering declaratory judgment in favor of plaintiff, petitioner, herein.

The District Court was prohibited by law, statute, from assuming or taking jurisdiction in this action. 28 *U.S.C.A. Section 1341* (known as the Johnson Act); *Geo. F. Alger Co. v. Peck*, 347 U.S. 984; 74 S.Ct. 605, 98 L.Ed. 1120. *28 U.S.C.A., Section 1341,* applies to declaratory judgments as well as injunctive relief. *Great Lakes Dredge & Dock Company v. Huffman,* 319 U.S. 293, 299, 63 S.Ct. 1070, 87 L.Ed. 1407.

In the *Great Lakes case*, page 1073, the Supreme Court makes it clear that the decision was to apply to municipal as well as state taxes.

In a case involving ad valorem taxes assessed by the City of Detroit, Judge Freeman of the United States District Court, E.D., Michigan, S.D., in *Helmsley v. City of Detroit*, 205 F.Supp. 793, 795, (aff. 320 F.2d 476), rendered judgment dismissing the Complaint, and held:

> "Title 28 U.S.C.A. §1341 (known as the Johnson Act) provides:
>
> " 'The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.'
>
> "Plaintiff contends that the Johnson Act does not apply because (1) injunctive relieve is not sought, and (2) plaintiff does not have a plain, speedy or efficient remedy in the State courts.
>
> "The Supreme Court has not yet decided the precise question of whether the Johnson Act should be construed to prohibit a declaration by Federal Courts concerning the invalidity of a State tax by declaratory judgment, but has held that:
>
> " '* * * those considerations which have led federal courts of equity to refuse to enjoin the collection of state taxes, save in exceptional cases, require a like restraint in the use of the declaratory judgment procedure.' *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 299, 63 S.Ct. 1070, 87 L.Ed. 1407.
>
> "See, also, 1 Moore's Federal Practice, pp. 2285-6.
>
> "The court in the Great Lakes case makes it clear that where the State affords an adequate remedy to the taxpayer, a Federal District Court should not take

jurisdiction, and on pp. 300-301, on p. 1074 of 63 S. Ct. of the opinion states:

"With due regard for these considerations, it is the court's duty to withhold such relief when, as in the present case, it appears that the state legislature has provided that on payment of any challenged tax to the appropriate state officer, the taxpayer may maintain a suit to recover it back. In such a suit he may assert his federal rights and secure a review of them by this Court.'

"In Great Lakes, the court also makes it clear that the decision was to apply to municipal as well as state taxes, and on p. 298, on p. 1073 of 63 S.Ct. says:

" 'Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or *municipal tax* is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved.' " (Emphasis supplied).

The United States Court of Appeals for the Fifth Circuit in *City of Orange, Texas v. Levingston Shipbuilding Company,* 258 F.2d, 240, recognized and upheld *28 U.S. C.A., Section 1341.*

THE STATE OF TEXAS PROVIDES PLAIN, ADEQUATE AND COMPLETE REMEDY FOR A TAXPAYER IF HIS PROPERTY IS ILLEGALLY ASSESSED.

The State of Texas provides plain, adequate, and complete remedy for a taxpayer if any of his property is illegally assessed. His remedies include:

1. Suit or action pursuant to the Declaratory Judgment Act, *Article 2524-1, Vernon's Texas Civil Statutes.*

2. By injunctive relief.

3. By paying such taxes under protest, and recovering same.

That a taxpayer may file an action for Declaratory Judgment is clearly held by the Supreme Court of Texas, in *River Oaks Garden Club v. City of Houston,* 370 S.W.2d 851.

The Supreme Court of Texas, in *Whelan v. State,* 155 Tex. 14, 282 S.W.2d 378, 383, held:

> "Article 7329 limits the defenses which may be interposed to suits for delinquent taxes. Subdivision 3 of that article reads as follows: 'That the taxes sued for are in excess of the limit allowed by law, but this defense shall apply only to such excess.' The language of subdivision 3 cannot be construed to mean that a taxpayer may defend against a suit for taxes only when his property is assessed at more than its fair market value or when the rate levied is in excess of that allowed by law. To so hold would require that the statute be held unconstitutional for it would operate to deny to the taxpayer his constitutional right to be taxed on an equal and uniform basis with others. The legislature has no power to sanction discrimination between taxpayers by taking away defenses. Vance v. Town of Pleasanton, Tex.Civ.App., 261 S.W. 457, 459, affirmed, Tex.Com.App., 277 S.W. 89; Howth v. French Independent School Dist., Tex. Civ.App., 115 S.W.2d 1036, 1038, affirmed 134 Tex. 211, 134 S.W.2d 1036."

In *Howth v. French Independent School District,* (aff. 134 S.W.2d 1036), Tex.Civ.App., 115 S.W.2d 1036, 1038, it is held:

> "Appellee contends that appellant's defenses were barred by the provisions of article 7329, R.C.S.: 'There shall be no defense to a suit for collection of delinquent taxes, as provided for in this chapter except: 1. That the defendant was not the owner of the land at the time the suit was filed. 2. That the taxes sued for had been paid, or 3. That the taxes sued for are in excess of the limit allowed by law.'
>
> "Notwithstanding the provisions of this article, the defendant in a tax suit may plead in defense that the assessment against his property was illegal, wrongful, arbitrary, and confiscatory, 40 Tex.Jur. §182; Town of Pleasanton v. Vance, Tex.Com.App., 277 S.W. 89; Stevens v. City of El Paso, Tex.Civ.App., 81 S.W.2d 149; City of West University Place v. Home Mortg. Co., Tex.Civ.App., 72 S.W.2d 361; Republic Ins. Co. v. Highland Park Independent School Dist., Tex.Civ. App., 57 S.W.2d 627; St. Louis South Western R. Co. v. Naples Independent School Dist., Tex.Civ.App., 30 S.W.2d 703.
>
> "The taxpayer, as appellant did in this case, may offer his defenses in an action by the state or a municipality; he does not have to bring a suit to enjoin the illegal tax. Mann v. State, 18 Tex.Civ.App., 701, 46 S.W. 652."

In *Town of Pleasanton v. Vance,* 277 S.W. 89, 90, 91, the Commission of Appeals of Texas, Section A, held:

> "Our Constitution also provides that 'taxation shall be equal and unform,' and that 'all property in this state * * * shall be taxed in proportion to its value,

which shall be ascertained as may be provided by law.' Article 8, §1. In a suit to recover taxes the owner of the property assessed has the right under this provision to show in defense of the action that the taxes assessed were not 'equal and uniform'; that the value of his property was not ascertained as provided by law; and that the value assessed is in excess of its real value. Acts 2d Called Sess. Thirty-Eighth Leg. c. 13, § 6, adding article 7689a to Revised Statutes of 1911, limiting defenses in suits for the collection of delinquent taxes as quoted in the above propositions, cannot deprive him of his right.

"The action of the trial court in sustaining the general demurrer to Vance's answer, together with the recital contained in the judgment, is conclusive that the evidence in support of the issues, joined by his general denial, as well as the issues tendered in the special pleas in his answer, was not considered by that court. Vance, then, has not been given a hearing on the merits on the issues of fact as to liability for the taxes assessed against his property for the year 1917. It is clear from the pleadings and evidence appearing in this record that the town of Pleasanton was not entitled to recover the taxes for either the year 1918, 1919, or 1920, as no taxes were legally levied against his property for either of those years.

"We approve the holding of the Court of Civil Appeals on the questions here discussed, and recommend that its judgment reversing and remanding the cause be affirmed."

THAT A TAXPAYER HAS A RIGHT TO SEEK INJUNCTIVE RELIEF IS THE ESTABLISHED LAW IN TEXAS.

A taxpayer has the right to injunctive relief from illegal tax assessments. *Dallas County v. Dallas National Bank,*

Tex. S.Ct. 142 Tex. 439, 179 S.W.2d, 288; *City of Houston v. Baker,* writ ref., Tex.Civ.App., 178 S.W. 820.

The United States Court of Appeals for the Fifth Circuit in *City of Orange v. Levingston Shipbuilding Company,* 258 F.2d, 240, clearly recognizes the right of injunctive relief afforded taxpayers by the State of Texas.

TAXPAYER MAY RECOVER TAXES PAID UNDER DURESS

The Supreme Court, and other appellate Courts of Texas, hold that where a legislative act by its terms provides for penalty and interest on taxes, the taxpayer may pay the taxes, and recover same if the tax is illegal, and in absence of statutory requirement to protest such payment, recovery can be had whether taxes were paid with or without protest. *Crow v. City of Corpus Christi,* Tex.S.Ct., 209 S.W.2d, 922, 924; *National Biscuit Company v. State,* Tex. S.Ct., 135 S.W.2d, 687, 692, 693; *City of San Antonio v. Grayburg Oil Co.,* n.w.h., Tex.Civ.App., 259 S.W. 2d, 985, 986.

The State of Texas provides plain, adequate and complete remedies by its own laws, and in its own courts for petitioner to challenge the validity of the subject ad valorem taxes assessed by Respondents. The District Court did not have jurisdiction of this action or suit or the subject matter thereof.

As a matter of law, the District Court did not have jurisdiction of this action or suit.

WHEREFORE, Respondents respectfully submit that petitioner's Petition For Writ of Certiorari should be in all things denied.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I, Homer T. Bouldin, Attorney for the City of Houston, and the Houston Independent School District, Respondents, do certify that a copy of this Brief has been forwarded by United States Certified Mail, return receipt requested, to the Honorable Burke Holman, Attorney of Record for Petitioner, 7th Floor, Tennessee Building, Houston, Texas, 77002.

Homer T. Bouldin

HOMER T. BOULDIN